

Report on the

STATE OF ALABAMA BOARD OF PODIATRY

Montgomery, Alabama



Department of Examiners of Public Accounts

**50 North Ripley Street, Room 3201
P.O. Box 302251
Montgomery, Alabama 36130-2251**

Ronald L. Jones, Chief Examiner

STATE OF ALABAMA
Department of
EXAMINERS OF PUBLIC ACCOUNTS

Telephone (334) 242-9200

FAX (334) 242-1775

Ronald L. Jones

Mailing Address:
P.O. Box 302251
Montgomery, AL 36130-2251

Location:
Gordon Persons Building

October 15, 2008

Representative Howard Sanderford
Chairman, Sunset Committee
Alabama State House
Montgomery, AL 36130

Dear Representative Sanderford,

This report was prepared to provide information for use by the Sunset Committee in conducting its review and evaluation of the operations of the Board of Podiatry in accordance with the ***Code of Alabama 1975***, Section 41-20-9.

The report contains unaudited information obtained from the management, staff, and records of the board, in addition to information obtained from other sources.

Please contact me if you have any questions concerning this report.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald L. Jones", written in a cursive style.

Ronald L. Jones
Chief Examiner

Examiner
Robin Hutcheson

THIS PAGE INTENTIONALLY LEFT BLANK

CONTENTS PAGE

PROFILE	1
Purpose/Authority	1
Characteristics.....	1
Operations	2
Financial.....	4
SIGNIFICANT ITEMS	4
STATUS OF PRIOR FINDINGS	5
ORGANIZATION	6
PERSONNEL	7
PERFORMANCE CHARACTERISTICS	7
SMART BUDGETING	9
REGULATION IN CONJUNCTION WITH OTHER.....	9
ENTITIES	9
FINANCIAL INFORMATION	9
Fee Schedule	10
Schedule of Receipts, Disbursements, and Balances.....	11
Operating Receipts Vs Operating Disbursements (Chart).....	12
APPENDICES	13
Statutes	13
Recent Legislation (Sunset) Act No. 2008-132).....	34
Board Members.....	37
RESPONSE TO SIGNIFICANT ITEMS	40

PROFILE

Purpose/Authority

The Board of Podiatry was created by Act No. 741, *Acts of Alabama 1967*. The board regulates the practice of podiatry in Alabama by licensing and regulating podiatrists. The legal authority for operation of the board is found in the *Code of Alabama 1975*, Sections 34-24-230 through 34-24-276. Additionally, the *Code of Alabama 1975*, Sections 20-2-2 and 20-2-50 through 20-2-58 are the legal authority for the board to certify and inspect podiatrists who prescribe controlled substances for compliance with Alabama's Controlled Substances Act.

Characteristics

Members and Selection	7 members, appointed by the governor. <i>Code of Alabama 1975, § 34-24-250(a)</i>
Term	5-year, staggered terms. No member of the board can be reappointed for a successive term; however, previous board members are eligible for non-successive appointments. <i>Code of Alabama 1975, § 34-24-250(a)</i>
Qualifications	25 years of age Citizen of the United States Alabama resident Engaged in the continuous practice of podiatry for at least 5 years next preceding appointment <i>Code of Alabama 1975, § 34-24-250(a)</i>
Racial Representation	Required by statute - at least one black member at all times (<i>Code of Alabama 1975, § 34-24-250(b)</i>) One black member serving
Geographical Representation	No statutory requirement.
Consumer Representation	No statutory requirement.

Other Representation	No statutory requirement.
Compensation	<p>\$300 per day while engaged in the discharge of official duties Travel expenses as provided to state employees.</p> <p><i>Code of Alabama 1975, § 34-24-253</i></p>
<u>Operations</u>	
Administrator	<p>Keith Warren, Executive Secretary</p> <p>The board contracts for the services of an executive secretary with Warren and Company Inc. The contract includes facilities, equipment, and administrative services.</p> <p>Annual Contract Amount - \$39,000</p>
Location	<p>610 South McDonough St. Montgomery, AL 36104</p>
Examinations	<p>Semi-annually in January/February and June/July.</p> <p>State law exam is prepared, administered, and graded by Warren and Co., Inc.</p> <p>National exam (PM Lexis) is prepared, administered, and graded by the National Association of Podiatric Boards. <i>Code of Alabama 1975, § 34-24-255 (b)</i></p> <p>The agency does not have pass/fail statistics for the National Exam.</p> <p>The State Law Exam was given to 4 applicants in FY 2007. All 4 passed.</p>
Renewals	<p>Annually, on or before the first of October</p> <p>Thirty-one day grace period to renew – Late penalty additional \$300.00</p> <p>No date specified by law for lapsing of license due to non-renewal <i>Code of Alabama 1975, Section 34-24-275.</i></p> <p>License may be suspended or revoked by the board for non-renewal and payment of fees. <i>Code of Alabama 1975, Section 34-24-276(7).</i></p>

Licensees	163 podiatrists as of June 26, 2008
Reciprocity	<p>The board may issue a reciprocal license to applicants meeting the requirements set out in its enabling legislation and administrative rules.</p> <p><i>Code of Alabama 1975, § 34-24-273</i> <i>Administrative Rule § 730-X-3-.03</i></p>
Continuing Education	<p>Yes, mandated by law as a condition for renewal - 12 hours annually</p> <p><i>Code of Alabama 1975, § 34-24-275</i></p>
Employees	None - Administrative services are provided by Warren and Co. Inc., under contract.
Legal Counsel	<p>Randolph Reeves 200 S. Lawrence St. Montgomery, AL 36104</p> <p>Private attorney, employed by contract</p> <p>Two (2) year contract not to exceed \$17,000 total Contract period – 10/1/07 through 9/30/09</p>
Subpoena Power	<p>Yes - witnesses and records.</p> <p><i>Code of Alabama 1975, § 34-24-276</i></p>
Internet Presence	<p>http://www.alabamapodiatryboard.org – The website contains the following information:</p> <p>Welcome screen with link buttons</p> <ul style="list-style-type: none"> • Board members information • Current Licensees (Search function) • Annual Report sent to the Governor • Rules and Regulations • Board Calendar • Contact Us (direct email link using outlook) • Complaint form • Link to view CPME accredited programs • Approved Board Minutes

Attended Board Member Training	Three board members attended on April 27, 2005; One board member attended on January 31, 2008. Executive Director attended more than once, the last time on January 31, 2008
<u>Financial</u>	
Source of Funds	Fees generated from operation of the board's licensing law
State Treasury	No - operates from bank checking account
Unused Funds	Unexpended balances at 9/30 over \$50,000 must be transferred to the state's General Fund. <i>Code of Alabama 1975</i> , § 34-24-253

SIGNIFICANT ITEMS

- 1. The State Ethics Commission could not locate the statements of economic interest for six of the seven board members.** During the examination the Examiner contacted the Ethics Commission to determine whether board members had filed the required Statement of Economic Interests with the State Ethics Commission. The staff at the Ethics Commission could not locate the statements for six board members. When notified, the board's executive secretary contacted the board members. According to the executive secretary, no response was received from the board members.

The *Code of Alabama 1975*, section 36-25-14 (a) states, "A statement of economic interests shall be completed and filed in accordance with this chapter with the commission no later than April 30 of each year covering the period of the preceding calendar year by each of the following:" "(4) Members of the Alabama Ethics Commission; appointed members of boards and commissions having statewide jurisdiction (but excluding members of solely advisory boards)."

- 2. The board did not submit legal services contracts to the Contract Review Permanent Legislative Oversight Committee, or obtain required Deputy Attorney General appointments for attorneys employed to perform legal work, and did not obtain the governor's approval to contract with attorneys at a higher rate than \$85/hour.** The board did not submit to the Contract Review Permanent Legislative Oversight Committee its agreement for procurement of hearing officer services from Ward & Wilson LLC and its agreement for procurement of legal counsel services from Randolph Reaves.

The *Code of Alabama 1975*, § 29-2-41.2(b) states that, "Notwithstanding any other provisions of this article, all contracts for employment of an attorney to provide legal services, including contracts involving an attorney providing legal services under an agreement with the Attorney General, shall be reviewed by the [contract] committee."

Additionally, Executive Order 1995-2 states, "It is ordered, that no attorney, other than

those who are employed as full-time State employees, may be employed to perform legal work for the State, unless and until that attorney has been duly designated as a deputy attorney general by the Attorney General's office. Be it further ordered, that those attorneys employed by the State and who are duly designated as deputy attorneys general by the Office of the Attorney General shall be paid at an hourly rate which should not exceed \$85.00 per hour. However, fees may be paid in a sum larger than \$85.00 per hour upon approval of the Governor, through his Legal Office, and for good cause shown."

STATUS OF PRIOR FINDINGS

Prior findings have been resolved with the exception of the following:

3. **Prior Significant Item - The terms of three of the board's seven members expired on 3/25/05, 3/25/06, and 3/25/07, respectively.** Two board members responding to our questionnaire mentioned this issue as significant.

Current Status. The board members who were previously identified as serving beyond their terms were been replaced. However, the board now has two other members serving beyond expiration of their terms. Recommendations have been sent to the governor.

4. **Prior Significant Item - Legislation requested by the board resulted in HB216 in the 2007 legislative session sponsored by Rep. Sanderford. The legislation was unsuccessful, but would have made the following amendments to the podiatry licensing law:**

- Authorize the board to hold meetings at its discretion rather than annually.
- Change the title of the executive of the board from executive secretary to executive director.
- Increase the maximum amount of administrative fines the board may impose from \$1,000 to \$2,000.
- Increase the reserve funds of the board from \$50,000 to \$100,000.
- Repeal the requirement that the president and administrative secretary of the board execute a bond before serving
- Expand the disciplinary powers of the board to include sexual misconduct as a reason for taking disciplinary action.
- Expand disciplinary options to include reprimanding a licensee, limiting a license, not renewing a license, or denying application for a license.
- Authorize any member of the board to countersign checks along with the
- Secretary-treasurer of the board.
- Delete or repeal antiquated and duplicative provisions.

Current Status - In the 2008 legislative session, the board again submitted bills to amend the podiatry licensing law as described above. The bills did not become law.

- HB612, sponsored by Rep. Sanderford
- SB470, sponsored by Sen. Griffith
- SB9 sponsored by Sen. Griffith, in the first special legislative session.

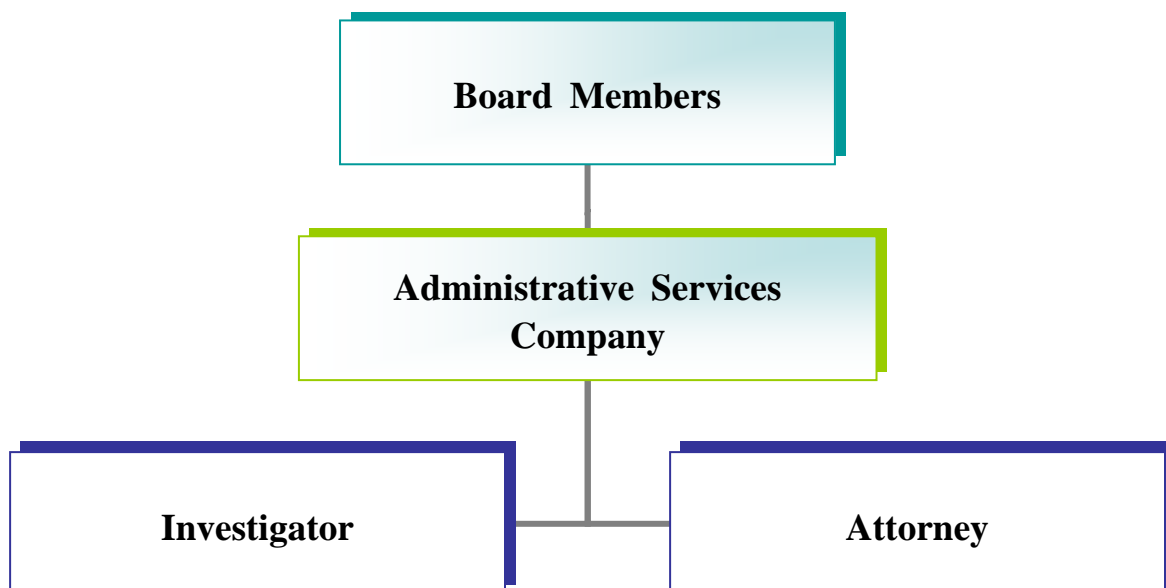
5. **Prior Significant Item - The board does not examine or license applicants in the manner prescribed by its enabling statutes.** The administrative assistant performs the entire examination and licensing process without input from the board. The board examines applicants only on knowledge of Alabama statutes and the board's administrative rules. Knowledge of podiatry is tested by national examination. The board's administrative assistant prepares the Alabama examination, proctors the examination, grades the examination, and then issues the certificate upon completion of the other licensing requirements and payment of fees. This procedure is not in accordance with examination procedures prescribed by law.

The *Code of Alabama 1975*, Section 34-24-256 states that, "The State Board of Podiatry shall on the day of the examination furnish each applicant with official blank paper, of uniform size, which size shall not vary but be kept uniform from year to year, and such official paper shall be paid for out of any funds received from fees paid by applicants. Before taking the examination, each applicant shall register his name and post office address, with such other facts as the board may require, and each applicant shall be given a number under which he shall be examined, which number shall be endorsed on the register, which must be kept securely by the secretary-treasurer of said board. Within 10 days after the grading of papers, each member of the board shall forward all papers graded by him to the secretary-treasurer."

In current practice, the applicant places his/her name on the cover sheet of the exam. No numbers are issued, the board members do not proctor or grade the exam, and the secretary-treasurer does not receive the graded papers.

Current Status – The board introduced SB91 in the 2008 legislative session, sponsored as SB91 by Sen. Griffith, that would have amended the examination procedures. However, the bill did not become law, and the examination procedures remain out of accord with the board's licensing law.

ORGANIZATION



PERSONNEL

There are no direct employees. The board contracts with Warren and Co., Inc. to provide an executive officer; administrative, accounting, and clerical services; and office facilities and equipment. The current contract is effective September 1, 2007 through September 30, 2010 in the amount of \$39,000 per year.

The board contracted with Hiltz Professional Services for inspections of controlled substance registrants and for complaint investigation services. The contract provides for compensation at \$30.00 per hour up to a maximum of \$12,000, plus reimbursement of expenses as incurred and mileage at .40¢ per mile up to \$3,000.00 for a contract maximum of \$15,000. The current contract covers the period of October 1, 2007 through September 30, 2012.

The board also contracted with private attorney Randolph Reaves for legal services. Reaves' compensation as the board's legal counsel is billed at \$120 per hour. Compensation for the services of legal clerks and paralegals is billed at no more than \$45 per hour. The contract covers the period October 1, 2007 through September 30, 2009. The contract is capped at \$17,000 for the contract period.

PERFORMANCE CHARACTERISTICS

Total Expenditure per Licensee (2007 fiscal Year) – \$63,459.76/ 163 = \$389.32

Number of Persons per Licensee in Alabama and surrounding States

<i>State</i>	<i>Population*</i>	<i>Licensees</i>	<i>Persons Per Licensee</i>
<i>Alabama**</i>	<i>4,627,851</i>	<i>163</i>	<i>28,392</i>
Florida	18,251,243	1,622	11,252
Georgia	9,544,750	469	20,351
Mississippi	2,918,785	82	35,595
Tennessee	6,156,719	228	27,003

*Population estimates from U.S. Census at <http://factfinder.census.gov>

**Number of licensees as of 6/26/2008

Notification to Licensees of Board decisions to Amend Administrative Rules

The board complied with notification procedures prescribed in the Administrative Procedure Act, which includes publication of proposed rules in the Administrative Monthly, and public hearings on proposed rules. Licensees are not individually notified of proposed changes.

Complaints

The board's administrative rules in Section 730-X-4 provide the procedures for documentation, receipt, and investigation of complaints relating to board licensees and illegal practices. From the fiscal year 2003 to the present (03/30/07), the board recorded seventeen (17) complaints. The board's attorney retains the complaint files.

Fiscal Year	Number of Complaints Received	Number of Complaints Resolved	Pending	Average Resolution Time
2006 (resolved in FY2007)	2	2	0	420 days (14 months)
FY 2007	5	4	1	251 days (8.37 months)
FY 2008	7	4	3	51.1 days (1.7 months)

COMPLAINT PROCESS	
Complaints originate from either consumers or from the board, based on information received. Complaints are processed through four stages as detailed below	
Initial Documentation	Complaints are generally received by telephone and followed up by a letter from the complainant. The complainant is asked to provide facts concerning their complaint and is told that an investigator may call on them for additional information. The complainant is encouraged to supply all pertinent records, or obtain them from the podiatrist in question.
Investigation	If the letter from the complainant indicates a practice act violation, the investigator collects data. The investigator works with the board's attorney and administrative assistant. If necessary, the Vice President of the board may be asked for assistance prior to the investigation. At the conclusion of the investigation, a report is written and submitted to the attorney who determines if the complaint has merit and decides how next to proceed.
Disposition of complaint if a formal hearing is not held	Informal dispositions usually involve complaints about advertising violations, which are generally resolved by a consent agreements and administrative fines.
Resolution	If no probable cause exists, the complaint is closed and all parties are notified. In addition, depending on the nature of the problem (such as complaints involving excessive billing or personality situations), the

	<p>complainant may be advised to forward the information to other appropriate authorities, such as the Alabama Podiatric Medical Association's Peer Review Committee. The president of the board, or in his absence, the vice president of the board, or in his absence, the secretary-treasurer of the board, presides during hearings but may rely upon the assistance and advice of a hearing officer. A quorum of the board necessary to decide contested cases is set at five (5) members. In all instances in which a complaint has been filed with the board, one member of the board must be appointed the investigating officer. This board member shall assist in the investigation of the case, and if necessary, the prosecution of the case, and cannot vote at the hearing.</p> <p>An administrative fine of up to \$1,000 may be levied.</p>
--	---

SMART BUDGETING

The board operates from a bank checking account. Consequently, it is not subject to the requirements of the Department of Finance and does not participate in the state's SMART budgeting process.

REGULATION IN CONJUNCTION WITH OTHER ENTITIES

Physicians, surgeons or persons authorized to practice the healing arts and whose practice is otherwise provided under Alabama law and who may perform podiatric procedures are exempted from the podiatry practice act.

FINANCIAL INFORMATION

Source of operating funds - Licensing fees & fines

Operates through a checking account with Regions Bank.

Balance of unused funds at year end - Retained by the board with the exception that "Should the funds in the hands of the board at the end of any fiscal year be more than fifty thousand dollars (\$50,000), the excess of this amount shall be paid into the General Fund in the State Treasury."

Code of Alabama 1975, § 34-24-253

Fee Schedule

Fee Type	Amount	Statute Code of Alabama 1975	Administrative Rule
Application Fee	\$100	34-24-255(a)(b)	730-X-3-.10
State Examination and Reexamination fee	\$100	34-24-255(b)	730-X-3-.10
License Renewal Fee	\$400	34-24-275	730-X-3-.10
Controlled Substance Initial and Renewal Fee	\$50	20-2-50 (Controlled Substances Law)"	730-X-3-.10
Late License Renewal Fee	\$300	34-24-275	730-X-3-.10
Special Certificate Fee	\$50	34-24-272	
Fines			
Administrative fine - each violation not to exceed	\$1,000	34-24-252	

Schedule of Receipts, Disbursements, and Balances

October 1, 2003 through September 30, 2007

	FY07	FY06	FY05	FY04
<u>Receipts</u>				
Fees	\$ 67,350.00	\$ 62,940.00	\$ 67,300.00	\$ 34,510.00
Administrative Fines	1,499.72	5,030.00	1,750.00	-
Interest Income	464.77	585.78	253.56	655.86
Total	69,314.49	68,555.78	\$69,303.56	35,165.86
<u>Disbursements</u>				
Personnel	6,900.00	5,621.15	8,476.70	32,726.46
Travel in State	3,016.02	2,272.82	4,641.50	377.04
Travel out of State	1,541.79	1,502.81	1,516.47	-
Rentals and Leases	-	-	369.69	596.51
Utilities and Communication	329.59	40.00	1,392.63	2,978.03
Professional Services	47,930.10	37,357.66	30,732.22	7,202.04
Supplies and Operating Expenses	3,742.26	3,338.23	2,349.95	1,339.49
Other Equipment Purchases	-	-	-	559.97
Misc.	-	-	752.78	135.40
Total	63,459.76	50,132.67	50,231.94	45,914.94
Excess (Deficiency) of Receipts over Disl	5,854.73	18,423.11	19,071.62	(10,749.08)
Cash Balances at Beginning of Year	51,075.74	32,652.63	13,581.01	24,330.09
Cash Balances at End of Year	\$ 56,930.47	\$ 51,075.74	\$ 32,652.63	\$ 13,581.01

Operating Receipts Vs Operating Disbursements (Chart)



APPENDICES

Statutes

ARTICLE 6 **PODIATRISTS**

DIVISION 1. GENERAL PROVISIONS.

§ 34-24-230. Definitions

For purposes of this title, the following terms shall have the respective meanings ascribed by this section:

- (1) Podiatry. The diagnosis and treatment of disorders of the human foot, as described herein.
- (2) Practice of podiatry. The diagnosis and medical or surgical or mechanical or electrical treatment of any ailment of the human foot except such definition does not include the amputation of the foot or the administering of an anesthetic other than local.
- (3) Diagnosis. The process of ascertaining a disease or ailment by its general symptoms.
- (4) Medical treatment. The application to or prescription for the foot of pads, adhesives, felt, plaster or any medicinal agency for both external and internal use in connection with treatment of local ailments of the human foot, except such definition does not include the medical treatment of any systemic disease, but does allow treating the local manifestations of those systemic diseases in the foot.
- (5) Surgical treatment. The use of any cutting instrument to treat a disease, ailment or condition of the human foot as defined herein, except that a podiatrist shall not be authorized to amputate the human foot, or perform any surgery on the human body at or above the ankle joint, or administer anesthetics other than local anesthetics.
- (6) Mechanical treatment. The application of any mechanical appliance made of steel, leather, felt or any material to the foot or in the shoe for the purpose of treating any disease, deformity or ailment.
- (7) Manipulative treatment. The use of the hand or machinery in the operation or working upon the foot and its articulations.
- (8) Electrical Treatment. Any treatment by means and methods supplied by electric current.
- (9) Human foot. The terminal appendage of the lower extremity. It contains 26 bones and is divided into three parts -- the forefoot, the midfoot, and the hindfoot. The forefoot consists of 14 phalanges and five metatarsals. The midfoot consists of five tarsal bones and their articulations. The hindfoot consists of two tarsal bones, the calcaneus and the talus. The foot is defined as including all 26 complete boney structures below the ankle joint, which ankle joint consists of the

distal tibia and fibula and their articulations with the talus. The distal aspect of the tibia and fibula, the achilles tendon, and all structures above the dome of the talus reside within the leg.

(Acts 1967, No. 741, p. 1586, § 1; Acts 1971, No. 2427, p. 3870, § 1; Acts 1975, No. 1199, p. 2376, § 1; Acts 1982, No. 82-437, p. 687, § 1; Acts 1983, 2nd Ex. Sess., No. 83-131, p. 137, § 1.)

ANNOTATIONS

1. Construction of terms

The phrase "or any medicinal agency" is also in the disjunctive, and it must be deemed to refer to the words "prescription for the foot." State Licensing Bd. for Healing Arts v. Alabama Bd. of Podiatry, 287 Ala. 132, 249 So.2d 611 (Ala.1971).

The words "application to" must refer to the application to the foot of pads, adhesives, felt and plaster. State Licensing Bd. for Healing Arts v. Alabama Bd. of Podiatry, 287 Ala. 132, 249 So.2d 611 (Ala.1971).

2. Relationship with other laws

Legislature intended to exclude podiatrists from the Medical Liability Act's coverage. Sellers v. Picou, 474 So.2d 667 (Ala.1985). Health 688

3. Prescription of medicine by podiatrist

It cannot be reasonably concluded that the Legislature, having authorized a podiatrist to perform limited surgery on the human foot, did not intend that a podiatrist could not prescribe medicine to discourage infection, to abate swelling and to alleviate pain resulting from treatment of the local disease of the foot, whether such medicine be taken internally or applied externally. State Licensing Bd. for Healing Arts v. Alabama Bd. of Podiatry, 287 Ala. 132, 249 So.2d 611 (Ala.1971).

4. Impairment of foot

Podiatrist's opinions constituted those of treating source, for purposes of determining claimant's eligibility for disability insurance benefits and supplemental security income (SSI) benefits, only to extent they addressed impairments of foot, and thus podiatrist's finding that claimant's pain was disabling was not conclusive, where claimant attributed much of pain she experienced to her ankles, legs and hips. James v. Barnhart, 2003 WL 21107297 (S.D.Ala.2003). Social Security And Public Welfare 143.65

§ 34-24-231. False or misleading statements in advertisements

It shall be unlawful for any person engaged in the practice of podiatry in this state to print or cause to be printed, or circulate or cause to be circulated, or publish or cause to be published, by any means whatsoever, any advertisement or circular in which appears any untruthful, impossible or improbable or misleading statement or statements, or anything calculated or intended to mislead or deceive the public.

(Acts 1967, No. 741, p. 1586, § 18.)

§ 34-24-232. Grandfather clause

Any person who has been engaged in the actual practice of podiatry in this state for at least three full years immediately prior to October 1, 1967, and is of good moral character, shall have 120 days from and after appointment of the first State Board of Podiatry in which to make declaration to the secretary-treasurer of said board, on a blank form to be furnished by said board, of his intention to continue the practice of podiatry in this state and his willingness to take such limited examination in podiatry as the said board may prescribe for the purpose of determining that he is qualified to practice podiatry without jeopardizing the public welfare. Any person serving in the military or naval forces of the United States who was engaged in the practice of podiatry in this state prior to his entering such service shall be considered as being engaged in the practice of podiatry during the time he is in such service. Those engaged in the practice of podiatry in this state as specified in this section who fail to make such declaration shall be deemed to have waived their right under the provisions of this section. Those referred to as privileged to make declaration to the secretary-treasurer of the said board of their intention to continue the practice of podiatry in this state may hereafter be referred to as declarants. Any person who holds a valid license to practice chiropody as provided under Act No. 140, Regular Session 1945, shall be eligible to become a declarant and shall be licensed to practice podiatry in this state, without examination, upon payment to the board of a registration fee of \$25.00, which license shall be subject to renewal as provided in this article.

(Acts 1967, No. 741, p. 1586, § 20.)

§ 34-24-233. Exemptions

Nothing in this article shall be construed as applying to physicians, surgeons or persons authorized to practice the healing arts as otherwise provided under the laws of the State of Alabama. No person who qualifies for a certificate of license under this article shall be subject to examination by the State Board of Medical Examiners.

(Acts 1967, No. 741, p. 1586, § 17; Acts 1975, No. 1199, p. 2376, § 6.)

ANNOTATIONS

1. Generally

Legislature intended to exclude podiatrists from the Medical Liability Act's coverage. *Sellers v. Picou*, 474 So.2d 667 (Ala.1985). Health 688

Cited in *State Licensing Board for Healing Arts v. Alabama Board of Podiatry*, 287 Ala. 132, 249 So.2d 611 (1971).

§ 34-24-234. Penalties for violations

Whoever violates any of the provisions of this article wherein the doing of such act is declared to be unlawful is guilty of a misdemeanor and on conviction shall be fined not less than \$100.00 nor more than \$1,000.00, or may be sentenced to hard labor for the

county or imprisoned for not more than six months.
(Acts 1967, No. 741, p. 1586, § 19.)

DIVISION 2. BOARD OF PODIATRY.

§ 34-24-250. Appointment; composition; qualifications of members; terms of office removal of members; vacancies; one black member required

(a) The Governor of Alabama shall appoint a State Board of Podiatry consisting of seven persons, each of whom shall be a citizen of the United States and of Alabama, over the age of 25, and shall have been engaged in the actual continuous practice of podiatry in the State of Alabama for at least five years next preceding his appointment. One member of said board shall be appointed each year, with the exception of three members being appointed every fifth year starting in 1979, for terms of five years and until their successors are appointed and qualified. No member of the board shall be reappointed for a successive term; previous board members will be eligible for nonsuccessive appointments. The Governor may remove from office at any time any member of the board for neglect of duty, incompetency, improper or unprofessional conduct or when the license or certificate of any member has been suspended or revoked. Vacancies on said board shall be filled by appointment by the Governor in the manner hereinbefore provided. The Governor shall furnish each member of said board at the time of his appointment a certificate of appointment, and said appointee shall qualify by taking the usual oath of office before the judge of probate of his home county within 15 days from the date of his appointment.

(b) After April 6, 1993, each vacant office occurring shall be first offered to each available black licensee until a black member is appointed to the board. When a black member is appointed to the board, thereafter appointments shall be made in such a manner as to ensure at least one black member on the board at all times.

(Acts 1967, No. 741, p. 1586, § 3; Acts 1979, No. 79-601, p. 1065, § 1; Acts 1993, No. 93-156, p. 233, § 3.)

ANNOTATIONS

1. Generally

Legislature intended to exclude podiatrists from the Medical Liability Act's coverage. *Sellers v. Picou*, 474 So.2d 667 (Ala.1985). Health 688
Cited in *State Licensing Board for Healing Arts v. Alabama Board of Podiatry*, 287 Ala. 132, 249 So.2d 611 (1971).

§ 34-24-251. Meetings; quorum

The State Board of Podiatry shall hold an annual meeting at such time and place as it may designate for the examination of applicants for licenses or certificates and for the discharge of all such other business as may legally come before it, and may hold such additional meetings, on call of the president of said board, and the president shall call such meetings on petition of a majority of the members of said board, as may be

necessary for the examination of the applicants for licenses or certificates, or for carrying into effect the provisions of this article; and at these meetings said board may transact any and all business that may legally come before it. The secretary-treasurer shall transact all ad interim business for said board unless otherwise specified in this article. A majority of the members of said board shall constitute a quorum for the transaction of business; and, should a quorum not be present on the day appointed for any meeting, those present may adjourn from day to day until a quorum is present.
(Acts 1967, No. 741, p. 1586, § 4; Acts 1989, No. 89-242, p. 342, § 3.)

§ 34-24-252. Powers and duties generally

The State Board of Podiatry shall be the certifying board for podiatrists and shall have the exclusive power and authority to certify and to issue, suspend, revoke, and reinstate all licenses or certificates authorizing the licensee to practice podiatry in the State of Alabama, and shall have the following authorities and shall perform the following duties:

- (1) To promulgate any rules and regulations for its government as it may deem necessary and proper; and for purposes of disciplining its licensees, in addition to any other powers of the board, the board may adopt and collect administrative fines, not to exceed \$1,000 per violation, and may institute any legal proceedings necessary to effect compliance with this chapter.
- (2) To provide a standard of efficiency as to the moral, educational, and experience qualifications and fitness for all persons who desire to practice podiatry in this state.
- (3) To elect annually one of its members as president, one as vice-president, and one as secretary-treasurer, who shall hold their respective offices for one year and until their successors are elected and qualified. If a vacancy occurs in either of the three offices, a special meeting of the board shall be called for the purpose of filling the vacancy for the unexpired term.
- (4) To administer any oaths and take any affidavits as are required by this article, certifying thereto under its hand and the seal of the board.
- (5) To assist in the prosecution of violations of this article.
- (6) To appoint or employ a legal adviser or counsel, when deemed necessary, whose compensation shall be fixed by the board and paid in the same manner as the per diem and expenses of the board are paid.
- (7) To adopt a common seal to be affixed to its official documents.
- (8) To keep a record of its proceedings, a register of persons licensed as podiatrists, and a register of licenses and certificates by it revoked.
- (9) To annually, on or before January 1, make a report to the Governor of Alabama of all its official acts during the preceding year, of its receipts and disbursements, a full and complete report of the condition of podiatry and the practice in this state, and to file duplicate copies of the report with the Secretary of State, the State Auditor, and the Alabama Department of Archives and History.
- (10) To employ, when deemed necessary and without regard to the state Merit System, and set the salary of, an executive secretary who shall serve at the pleasure of the board and shall administer board policy. The executive secretary

may be a licensee or member of the board.
(Acts 1967, No. 741, p. 1586, § 5; Acts 1987, No. 87-588, p. 970, § 1; Acts 1989, No. 89-242, p. 342, § 3; Acts 1993, No. 93-156, p. 233, § 3.)

§ 34-24-253. Compensation of members; disposition of funds realized from fees

The members of the State Board of Podiatry shall each be entitled to receive the same per diem and travel allowance as is paid by law for state employees for each day actually employed in the discharge of their official duties, in addition to any daily compensation or allowance, if any, as may be provided by the board, in such amount as may be determined by the board out of the funds realized from the fees provided for in this article. Should the funds in the hands of the board at the end of any fiscal year be more than fifty thousand dollars (\$50,000), the excess of this amount shall be paid into the General Fund in the State Treasury.

(Acts 1967, No. 741, p. 1586, § 6; Acts 1985, No. 85-359, p. 300, § 3; Acts 1989, No. 89-242, p. 342, § 3; Act 2001-253, p. 305, § 3.)

§ 34-24-254. Salary and bond of secretary-treasurer

The secretary-treasurer of the State Board of Podiatry shall be paid such salary, in addition to per diem and his necessary expenses, as may be fixed by said board, which shall be payable solely from the funds of the board. Before assuming the duties of his office, he shall execute a bond payable to the State of Alabama, to be approved by the board, in the sum of \$10,000.00, conditioned upon the faithful discharge of the duties of his office; the premium for such bond shall be paid from the funds realized from the fees provided for in this article. Such bond, with the approval of the board and oath of office endorsed thereon, shall be filed with the Secretary of State and shall be kept in his office.

(Acts 1967, No. 741, p. 1586, § 7; Acts 1989, No. 89-242, p. 342, § 3.)

§ 34-24-255. Examinations -- Required; qualifications of applicant; application scope; contents; issuance of license; fees

(a) Every person desiring to commence the practice of podiatry shall apply to the board and shall pay an application fee as established by the board. The applicant shall thereafter take and pass the standard examination provided in this article and fulfill the other requirements as herein provided. The applicant shall be 19 years of age or over, or the age as the board may by rule determine, of good moral character, shall be a graduate of a college of podiatry recognized by the American Podiatric Medical Association, shall have completed a podiatric residency approved by the American Podiatric Medical Association or by the State Board of Podiatry under its rules and regulations, shall have successfully passed all parts of the examination given by the National Board of Podiatric Examiners and shall be able to pass the standard examination prescribed by the State Board of Podiatry. The standard examination shall consist of tests in practical, theoretical, and physiological podiatry, in the anatomy and physiology of the human foot, and in pathology as applied to podiatry. In addition, the standard examination shall test

the knowledge of the applicant of the Podiatry Practice Act and the rules and regulations of the board. The standard examination shall not be out of keeping with established teachings and adopted textbooks of recognized schools of podiatry. If the applicant satisfactorily passes the examination provided for he or she shall be issued a license to practice podiatry.

(b) The board may establish and collect an application fee and an examination fee from applicants for licensure, and a nonrefundable reexamination fee for a second or subsequent examination.

(Acts 1967, No. 741, p. 1586, § 8; Acts 1975, No. 1199, p. 2376, § 2; Acts 1985, No. 85-359, p. 300, § 3; Acts 1987, No. 87-588, p. 970, § 1; Acts 1989, No. 89-242, p. 342, § 3; Acts 1997, No. 97-159, p. 216, § 3; Act 98-366, p. 665, § 1.)

§ 34-24-256. Examinations – Conduct

The State Board of Podiatry shall on the day of the examination furnish each applicant with official blank paper, of uniform size, which size shall not vary but be kept uniform from year to year, and such official paper shall be paid for out of any funds received from fees paid by applicants. Before taking the examination, each applicant shall register his name and post office address, with such other facts as the board may require, and each applicant shall be given a number under which he shall be examined, which number shall be endorsed on the register, which must be kept securely by the secretary-treasurer of said board. Within 10 days after the grading of papers, each member of the board shall forward all papers graded by him to the secretary-treasurer.

(Acts 1967, No. 741, p. 1586, § 9; Acts 1989, No. 89-242, p. 342, § 3.)

§ 34-24-257. Examinations -- Second or subsequent examination

If any applicant fails to pass the standard examination, he shall, after six months and prior to 12 months from the date of said failure, be permitted to take a second or subsequent authorized examination upon the payment of an additional nonrefundable fee as determined by the board. Should he fail to pass the second examination, the fee which accompanied his original application shall be forfeited to the board, and he shall not be entitled to another examination without making a new application and paying the nonrefundable fee.

(Acts 1967, No. 741, p. 1586, § 10; Acts 1975, No. 1199, p. 2376, § 3; Acts 1985, No. 85-359, p. 300, § 3; Acts 1989, No. 89-242, p. 342, § 3.)

§ 34-24-258. Deposit and expenditure of funds of the board; bonds of officers ratification of actions of existing bank account

(a) All funds received by the board shall be deposited to the credit of the board in a federally insured bank selected by the board, and the execution and enforcement of this article and the payments of salaries, expenses, and other authorized costs shall be paid by checks drawn by the secretary-treasurer and countersigned by the president or the administrative secretary of the board.

(b) The president, administrative secretary, and secretary-treasurer shall give such bonds

as the board from time to time directs.

(c) Any actions relating to any bank account of the board existing prior to March 26, 1997 are ratified and confirmed.

(Acts 1997, No. 97-159, p. 216, § 4.)

DIVISION 3. LICENSES.

§ 34-24-270. Practicing podiatry without license; penalty

Any person who shall practice podiatry in this state or hold himself out to the public as a podiatrist, or who shall in any sign or advertisement use the word "podiatrist," "foot specialist," "foot correctionist," "foot expert" or "chiropracist" or any other term or terms or letters indicating that he is a podiatrist or that he practices or holds himself out as practicing podiatry or foot correction, without having at the time of so doing a valid certificate of qualification as provided in this article, shall be guilty of a misdemeanor and, upon conviction, shall be fined for each offense not less than \$50.00 nor more than \$500.00, and may be imprisoned for not less than one month nor more than three months. This article shall not prohibit the fitting, recommending, advertising, adjusting or the sale of corrective shoes, arch supports or similar mechanical appliances or patent or proprietary remedies by licensed retail drug or shoe dealers or manufacturers; but this exception shall not apply to the casting, molding or making of individual molded footgear or devices, unless the same is made upon the prescription of a licensed physician or licensed podiatrist.

(Acts 1967, No. 741, p. 1586, § 2.)

§ 34-24-271. License to podiatrist coming to this state; fee. Repealed by Act 98-366, p. 665, § 2, effective July 1, 1998

§ 34-24-272. Special certificate

Any person who is a legal, ethical, and competent practitioner of podiatry in this state, who has been duly examined and licensed by the State Board of Podiatry, and of good moral character and known to the board as such, who shall desire to change his or her residence to another state or territory, or foreign country, shall, upon application to the board and the payment of a fee of fifty dollars (\$50), receive a special certificate over the signature of the president and secretary-treasurer of said board and bearing its seal which shall give the date upon which he or she was registered and licensed.

(Acts 1967, No. 741, p. 1586, § 12; Acts 1985, No. 85-359, p. 300, § 3; Act 98-366, p. 665, § 1.)

§ 34-24-273. Issuance; contents; display by holder

Every applicant who shall pass the standard examination, or whose reciprocity has been accepted by the State Board of Podiatry, shall receive from said board a license entitling him to practice podiatry in Alabama, which license shall be signed by the president of the board and countersigned by the secretary-treasurer of the board and have affixed thereto

the seal of the board and be duly numbered and registered in the record book kept by the secretary-treasurer of said board, which said record book shall be open to public inspection, and a duly certified copy of said record shall be received as evidence in all courts of this state in the trial of any case. Each person to whom a license has been issued shall keep said license conspicuously in his office or place of business and shall whenever required exhibit the license to any member or representative of the board. (Acts 1967, No. 741, p. 1586, § 13.)

§ 34-24-274. Recordation in probate office. Repealed by Acts 1989, No. 89-242, p 342, § 6, effective April 6, 1989

§ 34-24-275. Renewal; continuing education

Every licensed podiatrist who desires to continue the practice of podiatry shall annually, on or before the first of October, pay to the secretary-treasurer of the state board a renewal registration fee in a reasonable amount set by the board and comply with such other conditions as may be prescribed by the State Board of Podiatry; provided, however, that said license shall be renewed within 30 days after October first, or the licensee shall pay the renewal registration fee and a penalty of \$300.00. Among the conditions to be prescribed by the State Board of Podiatry is the requirement that evidence be furnished by the applicant for renewal of completion of a continuing education program. Such program shall consist of no less than 12 hours, which shall be obtained at the annual state meeting of the Alabama Podiatry Association or any other continuing education program approved by the State Board of Podiatry. Any licensed podiatrist who is inactive in the practice of podiatry for a period of two years may have his license renewed to practice his profession on such conditions as may be prescribed by the State Board of Podiatry.

(Acts 1967, No. 741, p. 1586, § 15; Acts 1975, No. 1199, p. 2376, § 5; Acts 1979, No. 79-601, p. 1065, § 2; Acts 1985, No. 85-359, p. 300, § 3.)

§ 34-24-276. Suspension or revocation; members of board immune from suit

A license issued to any person may be suspended for a definite period of time or revoked by the State Board of Podiatry for any of the following reasons:

(1) Conviction of any offense involving moral turpitude, in which case the record of conviction or a certified copy thereof certified by the clerk of the court or by the judge in which court the conviction is had shall be conclusive evidence of such conviction;

(2) For unprofessional conduct; "unprofessional conduct" shall mean any conduct of a character likely to deceive or defraud the public, lending his license by any licensed podiatrist to any person, the employment of "cappers," or "steerers" to obtain business, "splitting" or dividing a fee with any person or persons, the obtaining of any fee or compensation by fraud or misrepresentation, employing directly or indirectly any suspended or unlicensed podiatrist to do any professional work, fraudulent or misleading advertising, the use of any advertising which does not include a disclaimer required by rules and regulations of the

board, carrying the advertising of articles not connected with the profession, the employment of any drugs or medicines in his practice unless authorized to do so by the laws covering the practice of medicine of this state;

(3) When a license or certificate has been obtained by fraud, deceit or misrepresentation, whether knowingly or unknowingly practiced on the board;

(4) When the holder of a license or certificate is suffering from a contagious or infectious disease;

(5) Gross incompetency, wilful or wanton negligence or repeated negligence in the practice of podiatry;

(6) Intemperance in the use of intoxicating liquors or narcotics to such an extent as to unfit the holder of the license for the proper practice of podiatry;

(7) Failure to renew license and pay penalty as prescribed herein;

(8) Failure to comply with continuing education requirements prescribed herein;

(9) Violating any rule or regulation promulgated by the Board of Podiatry; or

(10) Disciplinary action taken by another state based upon acts by a licensee similar to acts described in this section which results in suspension or revocation of a license or certificate to practice podiatry in another state. A certified copy of the record of the disciplinary action of the state taking such an action shall be conclusive evidence thereof.

Whenever charges are preferred against any holder of a license, the board shall fix a time and place for the hearing of the same, and a copy of the charges, which must be made in writing, and verified by oath, together with a notice of the time and place where they will be heard and determined, shall be served upon the accused at least 10 days before the date fixed for said hearing. When personal service cannot be effected, the board shall cause to be published at least 30 days prior to the date set for the hearing in a newspaper published in the county in which accused was last known to practice a notice to the effect that at a definite time and place a hearing will be held by the board on charges preferred against said person. The board may issue subpoenas and compel the attendance of witnesses and the production of all necessary papers, books and records, documentary evidence and materials or other evidence; the accused shall have the right to be confronted by the person or persons preferring said charges, to cross-examine the witnesses against him, to be represented by counsel and to have the testimony taken down by a stenographer, but the expense of counsel and stenographer, either or both, shall be borne by the accused. Witnesses at hearings before the board shall testify under oath and may be sworn by any member of the board. In all cases of suspension or revocation of licenses as herein provided for, the holder may appeal to the circuit court, or other court of like jurisdiction, in the county in which the person whose license or certificate is ordered revoked resides. Members of the Board of Podiatry or the members of any committee of podiatrists impaneled by the board, making any report or rendering any opinion or supplying any evidence or information or offering any testimony to the board in connection with a disciplinary investigation or action as authorized in this article shall be immune from suit for any conduct in the course of their official duties with respect to such investigations, actions or hearings.

(Acts 1967, No. 741, p. 1586, § 16; Acts 1987, No. 87-588, p. 970, § 1.)

CHAPTER 2. CONTROLLED SUBSTANCES.
ARTICLE 3. REGULATION OF MANUFACTURE AND DISTRIBUTION.

§ 20-2-50. Certifying boards to promulgate rules and charge reasonable fees for registration and administration of provisions relating to manufacture, etc., of controlled substances; disposition of fees collected.

§ 20-2-51. Registration of persons manufacturing, distributing, or dispensing controlled substances -- General requirements.

(a) Every person who manufactures, distributes or dispenses any controlled substance within this state or who proposes to engage in the manufacture, distribution or dispensing of any controlled substance within this state must obtain annually a registration issued by the certifying boards in accordance with its rules.

(b) Persons registered by the certifying boards under this chapter to manufacture, distribute, dispense or conduct research with controlled substances may possess, manufacture, distribute, dispense or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this article.

(c) The following persons need not register and may lawfully possess controlled substances under this article:

(1) An agent or employee of any registered manufacturer, distributor or dispenser of any controlled substance if he is acting in the usual course of his business or employment;

(2) A common or contract carrier or warehouseman or an employee thereof whose possession of any controlled substance is in the usual course of business or employment;

(3) An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V substance.

(d) The certifying boards may waive by rule the requirement for registration of certain manufacturers, distributors or dispensers if they find it consistent with the public health and safety.

(e) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes or dispenses controlled substances.

(f) The certifying boards may inspect the establishment of a registrant or applicant for registration in accordance with the rules and regulations promulgated by them.

(Acts 1971, No. 1407, p. 2378, § 302.)

REFERENCES
LIBRARY REFERENCES

American Digest System:
Health 113, 304.

ANNOTATIONS CASENOTES

Burden of proving exception 1

Possession pursuant to lawful order 2

1. Burden of proving exception

Although this section provides an "exceptions" provision concerning who may lawfully dispense drugs under this chapter, the exceptions provision is not a part of the penalty clause itself. Thus negating the "matter of exception" is only necessary where the exception defining the crime is set forth in the enacting clause. *Warren v. State*, 52 Ala.App. 35, 288 So.2d 817 (Ala.Crim.App.1973), reversed 292 Ala. 71, 288 So.2d 826, on remand 52 Ala.App. 708, 288 So.2d 832.

2. Possession pursuant to lawful order

Possession of a controlled substance by an ultimate user or person in possession of a controlled substance pursuant to a lawful order of a practitioner does not constitute a violation of the Controlled Substances Act. *Walker v. State*, 358 So.2d 800 (Ala.Crim.App.1978). Controlled Substances 49

Cited in *Cassell v. State*, 55 Ala.App. 502, 317 So.2d 348 (Crim.App.1975); *Toles v. State*, 416 So.2d 768 (Ala.Crim.App.1982).

§ 20-2-52. Registration of persons manufacturing, distributing, or dispensing controlled substances -- Standards; requirements as to practitioners conducting research; effect of federal registration

(a) The certifying boards shall register only an applicant certified by their respective boards to manufacture, dispense or distribute controlled substances enumerated in Schedules I, II, III, IV and V; provided, that the State Board of Pharmacy shall register all manufacturers and wholesalers unless they determine that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the above-mentioned boards shall consider the following factors:

- (1) Maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific or industrial channels;
- (2) Compliance with applicable state and local law;
- (3) Any convictions of the applicant under any federal and state laws relating to any controlled substance;
- (4) Past experience in the manufacture or distribution of controlled substances and the existence in the applicant's establishment of effective controls against diversion;
- (5) Furnishing by the applicant of false or fraudulent material in any application filed under this article;
- (6) Suspension or revocation of the applicant's federal registration to manufacture, distribute or dispense controlled substances as authorized by federal law; and
- (7) Any other factors relevant to and consistent with the public health and safety.

(b) Registration under subsection (a) of this section does not entitle a registrant to manufacture and distribute controlled substances in Schedule I or II other than those

specified in the registration.

(c) Practitioners must be registered to dispense any controlled substances or to conduct research with controlled substances in Schedules II through V if they are authorized to dispense or conduct research under the laws of this state. The State Board of Health need not require separate registration under this article for practitioners engaging in research with nonnarcotic controlled substances in Schedules II through V where the registrant is already registered under this article in another capacity. Practitioners registered under federal law to conduct research with Schedule I substances may conduct research with Schedule I substances within this state upon furnishing the State Board of Health evidence of that federal registration.

(d) Compliance by manufacturers and distributors with the provisions of the federal law respecting registration (excluding fees) entitles them to be registered under this article. (Acts 1971, No. 1407, p. 2378, § 303; Acts 1976, No. 699, p. 965, § 3.)

REFERENCES

CROSS REFERENCES

For Controlled Substances Therapeutic Research Act, see § 20-2-110 et seq.

ADMINISTRATIVE CODE

4 Ala. Admin. Code 270-X-2-.11, Board of Dental Examiners; Dentists.

LIBRARY REFERENCES

American Digest System:
Health 113, 304.

§ 20-2-53. Registration of persons manufacturing, distributing, or dispensing controlled substances -- Order to show cause; proceedings; review; issuance of stay

(a) Before denying, suspending, or revoking a registration or refusing a renewal of registration, the certifying boards shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall call upon the applicant or registrant to appear before the certifying board at a time and place not less than 30 days after the date of service of the order, but in the case of a denial of renewal of registration the show cause order shall be served not later than 30 days before the expiration of the registration. These proceedings shall be conducted in accordance with the Alabama Administrative Procedure Act and the procedures established by the respective certifying board without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing.

(b) Anyone adversely affected by any order of a certifying board denying, suspending, or revoking a registration or refusing the renewal of a registration, whether or not such suspension, revocation, or registration is limited, may obtain judicial review thereof by filing a written petition for review with the Circuit Court of Montgomery County in accordance with Section 41-22-20.

(c) The following procedures shall take precedence over subsection (c) of Section 41-22-20 relating to the issuance of a stay of any order of the certifying board suspending,

revoking, or restricting a registration. The suspension, revocation, or restriction of a registration shall be given immediate effect, and no stay or supersedeas shall be granted pending judicial review of a decision by the certifying board to suspend, revoke, or restrict a registration unless a reviewing court, upon proof by the party seeking judicial review, finds in writing that the action of the certifying board was taken without statutory authority, was arbitrary or capricious, or constituted a gross abuse of discretion. Notwithstanding any other provision of law to the contrary, any action commenced for the purpose of seeking judicial review of the administrative decisions of a certifying board, including writ of mandamus, or judicial review pursuant to the Alabama Administrative Procedure Act, must be filed, commenced, and maintained in the Circuit Court of Montgomery County, Alabama.

(d) From the judgment of the circuit court, either the certifying board or the affected party who invoked the review may obtain a review of any final judgement of the circuit court under Section 41-22-21. No security shall be required of the certifying board.

(Acts 1971, No. 1407, p. 2378, § 305; Acts 1982, No. 82-492, p. 815, § 2; Act 2002-140, p. 359, § 3.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 2002 amendment, effective June 1, 2002, designated subsections (a), (b), and (d) and added subsection (c); in subsection (a) inserted "the Alabama Administrative Procedure Act and"; in subsection (b) substituted "judicial" for "a", substituted "in accordance with the provisions of Section 41-22-20" for "within 30 days after the entry of said order", and deleted the second through sixth sentences; and in subsection (d) substituted "obtain a review of any final judgment of the circuit court under the provisions of Section 41-22-21. No security shall be required of the certifying board." For "appeal directly to the supreme court of Alabama by taking such appeal within 42 days after the date of the making of and entering of its judgment by the circuit court." and deleted the last two sentences.

Code Commissioner's Notes

Acts 1982, No. 82-492, p. 815, § 1, provides: "That it is the intent of the legislature to provide a mechanism for judicial review of the actions of certifying boards under the Alabama Uniform Controlled Substances Act so that the rights of a registrant are not prejudiced prior to review by the circuit court of Montgomery county."

Section 3 of such act provides that the provisions of the act shall take precedence over the provisions of Chapter 22 of Title 41.

REFERENCES

CROSS REFERENCES

As to controlled substance registration certificate, see § 34-24-61.

ADMINISTRATIVE CODE

15 Ala. Admin. Code 540-X-5-.01 et seq., Board of Medical Examiners; Hearings and Appeals.

LIBRARY REFERENCES

American Digest System:

Health 135, 211, 223, 304, 323.

ANNOTATIONS CASENOTES

De novo hearing 2

Relation to other laws 1

Sufficiency of evidence 3

1. Relation to other laws

This section takes precedence over the provisions of the Administrative Procedure Act, § 41-22-1 et seq. *Benton v. Alabama Bd. of Medical Examiners*, 467 So.2d 234 (Ala.1985).

2. De novo hearing

Although this section is somewhat clumsily phrased, the clear intention of the Legislature is to provide for a de novo hearing in its truest sense. *Benton v. Alabama Bd. of Medical Examiners*, 467 So.2d 234 (Ala.1985).

Right to practice medicine is a property right which may be denied only if the denial is consonant with due process, and due process requires, among other things, a hearing consistent with the essentials of a fair trial, which include holding a de novo hearing when required by law. *Benton v. Alabama Bd. of Medical Examiners*, 467 So.2d 234 (Ala.1985).

3. Sufficiency of evidence

Order of the Alabama state board of medical examiners denying physician's request for a full and unrestricted Alabama controlled substance certificate, as upheld by the circuit court, would be reversed where the evidence showed that physician had admitted herself to the United States Public Health Hospital in Kentucky for the purpose of treating a narcotics addiction 25 years ago, and that the physician had abnormally high Schedule II drug orders during that same period of time, but where the record was completely devoid of any other relevant evidence to support the conclusion that her prescription rights should continue to be restricted 25 years later. *Benton v. Alabama Bd. of Medical Examiners*, 467 So.2d 234 (Ala.1985).

§ 20-2-54. Registration of persons manufacturing, distributing, or dispensing controlled substances -- Revocation or suspension of registration -- Grounds and procedure enerally.

(a) A registration under Section 20-2-52 to manufacture, distribute or dispense a controlled substance may be suspended or revoked by the certifying boards upon a finding that the registrant:

- (1) Has furnished false or fraudulent material information in any application filed under this article;
- (2) Has been convicted of a crime under any state or federal law relating to any controlled substance;
- (3) Has had his federal registration suspended or revoked to manufacture, distribute or dispense controlled substances;
- (4) Has violated the provisions of Chapter 23 of Title 34; or
- (5) Has, in the opinion of the certifying board, excessively dispensed controlled substances for any of his patients.

a. A registrant may be considered to have excessively dispensed controlled substances if his certifying board finds that either the controlled substances were dispensed for no legitimate medical purpose, or that the amount of controlled substances dispensed by the registrant is not reasonably related to the proper medical management of his patient's illnesses or conditions. Drug addiction shall not be considered an illness or condition which would justify continued dispensing of controlled substances, except in gradually decreasing dosages administered to the patient for the purpose of curing the addiction.

b. A registrant who is a physician licensed to practice medicine in the State of Alabama may be considered to have excessively dispensed controlled substances if he or she prescribes, orders, dispenses, administers, supplies or otherwise distributes any Schedule II amphetamine and/or Schedule II amphetamine-like anorectic drug, and/or Schedule II sympathomimetic amine drug or compound thereof, and/or any salt, compound, isomer, derivative or preparation of the foregoing which are chemically equivalent thereto, and/or other non-narcotic Schedule II stimulant drug, which drugs or compounds are classified under Schedule II of the Alabama Uniform Controlled Substances Act, Section 20-2-24, to any person except for the therapeutic treatment of:

1. Narcolepsy.
2. Hyperkinesis.
3. Brain dysfunction of sufficiently specific diagnosis, or etiology which clearly indicates the need for these substances in treatment or control.
4. Epilepsy.
5. Differential psychiatric evaluation of clinically significant depression provided however, that such treatment shall not extend beyond a period of 30 days unless the patient is referred to a licensed practitioner specializing in the treatment of depression.
6. Clinically significant depression shown to be refractory to other therapeutic modalities provided however, that such treatment shall not extend beyond a period of 30 days unless the patient is referred to a licensed practitioner specializing in the treatment of depression;

or for the clinical investigation of the effects of such drugs or compounds, in which case an investigative protocol must be submitted to and reviewed and approved by the State Board of Medical Examiners before the investigation has begun. A physician prescribing, ordering or otherwise distributing the controlled substances listed above in the manner permitted by this subsection shall maintain a complete record which must include documentation of the diagnosis and reason for prescribing, the name, dose, strength, and quantity of the drug, and the date prescribed or distributed. The records required under this subsection shall be made available for inspection by the certifying

board or its authorized representative upon request. Those Schedule II stimulant drugs enumerated above shall not be dispensed or prescribed for the treatment or control of exogenous obesity.

(b) The certifying boards may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

(c) If the certifying boards suspend or revoke a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited to the state.

(d) The certifying boards shall promptly notify the Drug Enforcement Administration of the United States Department of Justice of all orders suspending or revoking registration and all forfeitures of controlled substances.

(Acts 1971, No. 1407, p. 2378, § 304; Acts 1979, No. 79-204, p. 313, § 1; Acts 1983, 4th Ex. Sess., No. 83-890, § 2; Act 2001-971, 3rd Sp. Sess., p. 873, § 2.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 2001 amendment, effective September 26, 2001, in subsection (d) substituted "Drug Enforcement Administration of the United States Department of Justice" for "bureau".

Code Commissioner's Notes

Acts 1983, No. 83-890, § 1, provides: "That it is the intent of the legislature to take cognizance of the fact that significant amounts of amphetamines and amphetamine like stimulant drugs, classified under schedule II of the Alabama Uniform Controlled Substances Act, are each year being diverted to illegal use and that such diversion contributes substantially to the problems of illegal drug trafficking in the state of Alabama; further that it is the legislative intent that the utilization of amphetamines and amphetamine like drugs and compounds, including sympathomimetic amine drugs or compounds thereof, and other schedule II nonnarcotic stimulant drugs should be limited to the treatment of those conditions where the safety and effectiveness of the drugs has been clearly demonstrated."

REFERENCES

CROSS REFERENCES

As to controlled substance registration certificate, see § 34-24-61.

As to assessment of administrative fines for violation of this section, see § 34-24-380.

ADMINISTRATIVE CODE

15 Ala. Admin. Code 540-X-4-.01 et seq., Board of Medical Examiners; Controlled Substances Certificate.

15 Ala. Admin. Code 540-X-5-.01 et seq., Board of Medical Examiners; Hearings and Appeals.

LIBRARY REFERENCES

American Digest System:
Health 211, 304.

ANNOTATIONS CASENOTES

"Dispensing" 2

Legitimate medical purpose standard 1

Sufficiency of evidence 3

1. Legitimate medical purpose standard

The "for a legitimate medical purpose" standard is clearly specified in paragraph (a)(5)a. of this section and incorporated by implication into the "except as authorized by this chapter" language of former § 20-2-70(a). *Evers v. State*, 434 So.2d 804 (Ala.Crim.App.1982), reversed 434 So.2d 813, on remand 434 So.2d 817.

2. "Dispensing"

As used in subdivision (a)(5) of this section dispensing includes the act of prescribing. Since the broader grouping of selling, furnishing or giving away encompasses the act of dispensing, it, likewise, includes the act of prescribing. *Evers v. State*, 434 So.2d 804 (Ala.Crim.App.1982), reversed 434 So.2d 813, on remand 434 So.2d 817.

3. Sufficiency of evidence

Order of the Alabama state board of medical examiners denying physician's request for a full and unrestricted Alabama controlled substance certificate, as upheld by the circuit court, would be reversed where the evidence showed that physician had admitted herself to the United States Public Health Hospital in Kentucky for the purpose of treating a narcotics addiction 25 years ago, and that the physician had abnormally high Schedule II drug orders during that same period of time, but where the record was completely devoid of any other relevant evidence to support the conclusion that her prescription rights should continue to be restricted 25 years later. *Benton v. Alabama Bd. of Medical Examiners*, 467 So.2d 234 (Ala.1985).

§ 20-2-54.1. Rules and regulations

The certifying boards under the Alabama Uniform Controlled Substances Act, the State Board of Medical Examiners and the Medical Licensure Commission are each authorized to promulgate such rules and regulations as may be required to implement the provisions of this chapter.

(Acts 1983, 4th Ex. Sess., No. 83-890, § 4.)

REFERENCES
LIBRARY REFERENCES

American Digest System:
Health 111, 322.

§ 20-2-55. Registration of persons manufacturing, distributing, or dispensing controlled substances -- Revocation or suspension of registration -- Suspension without prior order to show cause

The certifying boards may suspend, without an order to show cause, any registration simultaneously with the institution of proceedings under Section 20-2-54 or where renewal of registration is refused, if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the certifying boards or dissolved by a court of competent jurisdiction.
(Acts 1971, No. 1407, p. 2378, § 305.)

REFERENCES
LIBRARY REFERENCES

American Digest System:
Health 211, 304.

§ 20-2-56. Maintenance of records and inventories by registrants generally

Persons registered to manufacture, distribute or dispense controlled substances under this article shall keep records and maintain inventories in conformance with the record keeping and inventory requirements of federal law and with any additional rules issued by the State Board of Medical Examiners, the State Board of Health or the State Board of Pharmacy.
(Acts 1971, No. 1407, p. 2378, § 306; Acts 1976, No. 699, p. 965, § 4.)

REFERENCES
LIBRARY REFERENCES

American Digest System:
Health 192, 198, 304.

§ 20-2-57. Distribution of certain controlled substances by one registrant to another registrant

Controlled substances in Schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section.
(Acts 1971, No. 1407, p. 2378, § 307.)

§ 20-2-58. Dispensing of controlled substances in Schedule II; maintenance of records, and inventories by registered pharmacies

(a) Except as otherwise provided in this section or as otherwise provided by law, a pharmacist may dispense directly a controlled substance in Schedule II only pursuant to a written prescription signed by the practitioner. Except as provided in subsections (b) and

(b) A prescription written for a Schedule II narcotic substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous, or intraspinal infusion may be transmitted by the practitioner or the agent of the practitioner to the home infusion pharmacy by facsimile. The facsimile shall serve as the original written prescription.

(c) A prescription written for Schedule II substances for a resident of a long-term care facility may be transmitted by the practitioner or the agent of the practitioner to the dispensing pharmacy by facsimile. The facsimile shall serve as the original written prescription.

(d) Each registered pharmacy shall maintain the inventories and records of controlled substances as follows:

(1) Inventories and records of all controlled substances listed in Schedules I and II shall be maintained separately from all other records of the pharmacy, and prescriptions for the substances shall be maintained in a separate prescription file.

(2) Inventories and records of controlled substances listed in Schedules III, IV, and V shall be maintained either separately from all other records of the pharmacy or in the form that the information required is readily retrievable from ordinary business records of the pharmacy, and prescriptions for the substances shall be maintained either in separate prescription file for controlled substances listed in Schedules III, IV, and V only or in the form that they are readily retrievable from the other prescription records of the pharmacy.

(e) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in Schedule III or IV which is a prescription drug as determined under State Board of Health statute, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

(f) A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

(g) In an emergency situation, a pharmacist may dispense a Schedule II controlled substance for a resident of a long-term care facility, a patient receiving hospice services, or a patient receiving home health care services pursuant to an emergency oral prescription transmitted by the practitioner to the dispensing pharmacy. The quantity dispensed pursuant to an emergency oral prescription shall be limited to the amount adequate to treat the patient during the emergency period not to exceed 72 hours. The practitioner, within seven days of the emergency oral prescription, shall provide the dispensing pharmacy with a written prescription for the quantity prescribed.

(Acts 1971, No. 1407, p. 2378, § 308; Acts 1995, No. 95-732, p. 1565, § 1; Act 98-617, p. 1358, § 1; Act 2006-183, p. 256, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1995 amendment, effective August 7, 1995, rewrote former subsection (a); added present subsections (b) and (c); and made nonsubstantive changes.

The 1998 amendment, effective August 1, 1998, in subdivision (d)(2) deleted the last sentence which read: "Prescriptions will be deemed readily retrievable if, at the time they are initially filed, the face of the prescription is stamped in red ink in the lower right corner with the letter 'C' no less than one inch high and filed either in the prescription file for controlled substances listed in Schedules I and II or in the usual consecutively numbered prescription file for noncontrolled substances."

The 2006 amendment, effective March 7, 2006, in subsection (a) substituted "Except as otherwise provided in this section or as otherwise provided by law, a" for "A"; in subsection (c) substituted "long-term" for "long term"; in subsection (d), in subdivision (2) inserted commas following "IV" in two places; and added subsection (g).

REFERENCES

LIBRARY REFERENCES

American Digest System:
Health 198.

ANNOTATIONS

CASENOTES

Jury instructions, lesser included offenses 2
Lesser included offenses 1, 2
Lesser included offenses - Jury instructions 2

1. Lesser included offenses

Failure to keep records of prescriptions is lesser included offense of unlawful sale of controlled substances without prescription. The one element separating the two offenses is authorization by a prescribing physician to sell the controlled substance. *Ex parte Stephens*, 512 So.2d 786 (Ala.1987), on remand 512 So.2d 789.

2. ---- Jury instructions, lesser included offenses

In a prosecution for unlawful sale of controlled substances without a prescription, where there was evidence offered which could establish that the pharmacist had oral prescriptions before dispensing the drugs, but failed to properly document them, the trial court erred in refusing to charge the jury on the lesser included offense of failure to keep records of prescriptions. *Ex parte Stephens*, 512 So.2d 786 (Ala.1987), on remand 512 So.2d 789.

Cited in *Miller v. State*, 54 Ala.App. 230, 307 So.2d 40 (Crim.App.1974); *Chesteen v. State*, 365 So.2d 102 (Ala.Crim.App.1978), cert. quashed 365 So.2d 108 (Ala.).

Recent Legislation (Sunset) Act No. 2008-132)

SB169

98964-4

By Senators Dixon, Griffith, Little (T), Barron, and Figures

RFD: Fiscal Responsibility and Accountability

First Read: 05-FEB-08



SB169

2

3

4

ENROLLED, An Act,

5

Relating to the Alabama Sunset Law; to continue the

6

existence and functioning of the State Board of Podiatry until

7

October 1, 2009, with certain modifications; to amend Section

8

34-24-255, Code of Alabama 1975, so as to require applicants

9

for licensure to be United States citizens or legally present

10

in the United States.

11

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. Pursuant to the Alabama Sunset Law, the
13 sunset committee recommends the continuance of the State Board
14 of Podiatry until October 1, 2009, with the additional
15 recommendation for statutory change as set out in Section 3.
16 Section 2. The existence and functioning of the
17 State Board of Podiatry, created and functioning pursuant to
18 Sections 34-24-230 to 34-24-276, inclusive, Code of Alabama
19 1975, is continued until October 1, 2009, and those code
20 sections are expressly preserved.
21 Section 3. Section 34-24-255 of the Code of Alabama
22 1975, "§34-24-255 is amended to read as follows:
23 (a) Every person desiring to commence the practice
25 of podiatry shall apply to the board and shall pay an

1 application fee as established by the board. The applicant
2 shall thereafter take and pass the standard examination
3 provided in this article and fulfill the other requirements as
4 herein provided. The applicant shall be 19 years of age or
5 over, or the age as the board may by rule determine, shall be
6 a citizen of the United States or, if not a citizen of the
7 United States, a person who is legally present in the United
8 States with appropriate documentation from the federal
9 government, of good moral character, shall be a graduate of a

10 college of podiatry recognized by the American Podiatric
11 Medical Association, shall have completed a podiatric
12 residency approved by the American Podiatric Medical
13 Association or by the State Board of Podiatry under its rules

14 and regulations, shall have successfully passed all parts of
15 the examination given by the National Board of Podiatric
16 Examiners and shall be able to pass the standard examination
17 prescribed by the State Board of Podiatry. The standard
18 examination shall consist of tests in practical, theoretical,
19 and physiological podiatry, in the anatomy and physiology of
20 the human foot, and in pathology as applied to podiatry. In
21 addition, the standard examination shall test the knowledge of
22 the applicant of the Podiatry Practice Act and the rules and
23 regulations of the board. The standard examination shall not
24 be out of keeping with established teachings and adopted
25 textbooks of recognized schools of podiatry. If the applicant

1 satisfactorily passes the examination provided for he or she
2 shall be issued a license to practice podiatry.

3 "(b) The board may establish and collect an
4 application fee and an examination fee from applicants for
5 licensure, and a nonrefundable reexamination fee for a second
6 or subsequent examination."

7 Section 4. The Legislature concurs in the
8 recommendations of the Sunset Committee as provided in
9 Sections 1, 2, and 3.

10 Section 5. This act shall become effective
11 immediately upon its passage and approval by the Governor, or
12 its otherwise becoming law.

Board Members

Alabama State Board of Podiatry

610 S. McDonough Street Montgomery, Alabama 36104
Telephone: (334) 269-9990 Fax: (334) 263-6115



July 15, 2008

Robin Hutcheson
Examiners of Public Accounts
Post Office Box 302251
Montgomery, AL 36130-2251

Dear Ms. Hutcheson:

Listed below are the Board members serving during the audit period.

Please do not hesitate to contact me regarding any additional questions.

Sincerely,



Keith E. Warren
Executive Director

BOARD MEMBERS

NAME	TERM EXPIRATION	DATE OF APPOINTMENT	POSITION
Patricia Antero 303 Hargrove Road East Tuscaloosa, AL 35401	May 25, 2009	May 12, 2004	President
James H. Morgan 705 North Bishop Lane Mobile, AL 36608	March 25, 2009	May 21, 2004	President Vice-Pres.
Eric B. Fillinger 1938 AL Hwy. 157 Suite 101 Cullman, AL 35058	March 25, 2011	May 15, 2007	
Steven Grunfeld 2012 8 th Court Street Birmingham, AL 35205	March 25, 2010	May 15, 2007	Vice-Pres.
Darron M. Barrus Post Office Box 1698 Alabaster, AL 35007-1698	March 25, 2009	March 12, 2004	Sec./Tres.
Tara Blasingame Post Office Box 6487 Huntsville, AL 35824	March 25, 2008	August 21, 2003	
Mark Veres 4152-B Carmichael Road Montgomery, AL 36106	March 25, 2007	July 19, 2002	President

RESPONSE TO SIGNIFICANT ITEMS



Alabama State Board of Podiatry

610 S. McDonough Street Montgomery, Alabama 36104
Telephone: (334) 269-9990 Fax: (334) 263-6115

September 26, 2008


Mr. John E. Norris
Director, Operational Division
State of Alabama
Department of Examiners of Public Accounts
Post Office Box 302251
Montgomery, AL 36130-2251

Dear Mr. Norris:

I am in receipt of your letter dated September 15, 2008 regarding the items that will appear in the report to the Sunset Committee. I have attached the responses to these items accordingly.

Please let me know if you have any questions regarding these responses or require any additional information. As always, thank you for your assistance and cooperation in this matter.

Respectfully Submitted


Keith E. Warren
Executive Director

RESPONSES TO SIGNIFICANT ITEMS

1. **The State Ethics Commission could not locate statements of economic interest for six of the seven board members.** The problem of locating these forms seems to be increasing. The board staff sends memos to the each member informing them of the deadline for these forms as well as the web site in which they can be found. To eliminate this problem in the future, Board members will forward their completed forms to the office and Board staff hand deliver these forms to the Ethics Commission along with a copy to be stamped received. These copies will be maintained in the board office as documentation showing the forms were submitted to the Ethics Commission.
2. **The board did not submit legal services contracts to the Contract Review Permanent Legislative Oversight Committee or obtain required Deputy Attorney General appointments for attorneys employed to perform legal work, and did not obtain the governor's approval to contract with attorneys at a higher rate than \$85/hour.** At the time these contracts were to be renewed, I was informed that since this is a check book agency that services that were bid were not subject to the Contract Review Committee. My mistake was not seeking clarification regarding legal services contracts. Both legal contracts have been submitted to the Contract Review Committee and will be on the agenda for the next meeting on October 2, 2008. There are also letters from the Governor's Legal Office approving the rates that are higher than \$85 per hour. A letter is being submitted to Attorney General King requesting the appointment of Mr. Reeves and Mr. Ward to represent the State Board of Podiatry.

STATUTE OF PRIOR FINDINGS

3. **Prior Significant Item – The terms of three of the board's seven members expired on 3/25/05, 3/25/06, and 3/25/07, respectively.** The board now has two additional members that are serving beyond their expiration of their terms. Names for replacements in these seats have been submitted to the Governor's Office for his review.
4. **Prior Significant Item – Legislation requested by the board resulted in HB16 in the 2007 legislative session sponsored by Rep. Sanderford. The legislation was unsuccessful** This legislation was also offered during the 2008 Regular Session as well as the 2008 Special Session. The Board will continue to seek this legislation and considers it a priority. The Alabama Podiatric Medical Association has been very instrumental in assisting the Board in lobbying this legislation.
5. **Prior Significant Item – The board does not examine or license applicants in the manner prescribed by its enabling statutes.** The Board is aware that its examination procedures are not in compliance with the current statute and continues to delegate the administration of this examination to the staff. The Board will also continue to have this section amended in its proposed legislation.